Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Schools and Libraries Universal Service Support Mechanism	CC Docket No. 02-6
A National Broadband Plan For Our Future	GN Docket No. 09-51

REPLY COMMENTS OF BLACKBOARD INC.

Blackboard Inc. ("Blackboard"), by it attorneys, hereby submits these reply comments to

the Federal Communications Commission ("FCC" or "Commission") in the above-captioned

proceedings to address key issues regarding the Schools and Libraries Program and the National

Broadband Plan raised in the *E-rate Broadband NPRM*, the *ESL Order and FNPRM*, and the

draft Eligible Services List ("ESL") proposed by the Universal Service Administrative Company

for E-rate funding year 2011.[1]

I. INTRODUCTION & SUMMARY

As Blackboard explained in its initial comments, Blackboard is a leading provider of

enterprise software applications and related services to the education industry. Blackboard's

clients include colleges, universities, and K-12 schools which use Blackboard's technology to

enhance the educational experience and campus life. Blackboard is a publicly-traded company,

founded in 1997 and headquartered in Washington, D.C. With its financial resources, track

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[1] *Schools and Libraries Universal Service Support Mechanism*, *A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, NPRM, FCC 10-83 (rel. May 20, 2010) ("*E-rate Broadband NPRM*"); *Schools and Libraries Universal Support Mechanism,* CC Docket No. 02-6, Order and FNRPM, FCC 09-105 (rel. Dec. 2, 2009) ("*ESL Order and FNPRM*"); *Wireline Competition Bureau Announces Comment Deadlines on E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-rate Draft Eligible Services List for Funding Year 2011*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, DA 10-1045 (rel. June 9, 2010) ("*Draft ESL PN*").

record of success and commitment to the educational industry, Blackboard is exactly the type of company with which schools receiving E-rate funding should look to partner.

In these reply comments, Blackboard urges the Commission to: (1) provide greater flexibility for E-rate recipients to select the communications services that best meet their needs; (2) continue to provide funding to E-rate applicants for web hosting services; (3) add broadcast text messaging to the E-rate Eligible Services List ("ESL"); and (4) index the current E-rate funding mechanism to the inflation rate.

II.   SCHOOLS SHOULD HAVE FLEXIBILITY IN HOW THEY MEET THEIR COMMUNICATIONS NEEDS

Blackboard adds its voice to commenters urging the Commission to recognize that "educational tools and resources are not devalued when accessed [by students] while off of school or library premises" but rather that "their value, usefulness, and effectiveness increases because they are used with greater frequency."[2] As Motorola explains:

> Teachers in K-12 schools are harnessing the power of the Internet to enrich the learning experience for today's students. They post online study guides and educational web resources for students to be used in completing homework, research papers and preparing for tests. These online tools are a valuable resource not only for students, but for parents striving to stay connected with their children's education experience. They extend the educational benefits of study hall, the school library or parent teacher conferences to the home. Teachers use school websites and email to reach out to parents with information about assignments, grades and more generally to open a dialogue about their child's education.[3]

As Cisco Systems points out, "technological advances create educational opportunities for students anywhere students have access to a broadband connection, allowing learning to continue

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[2]   Motorola Comments at 2; CTIA Comments at 15.

[3]   *Id.* at 1-2.

even after students leave school grounds."[4] As such, Blackboard joins with the Ohio E-rate Consortium in believing that "the Commission should provide greater flexibility for students to access the Internet outside of the classroom."[5]

The first step is for the Commission to modify its rules so as to expand the ability of students, teachers and administrators to gain access to and use educational applications, regardless of where the students are located or whether school is in session. As the Commission noted in the *First USF Report & Order*:

> [T]he establishment of a single set of priorities for all schools and libraries would substitute our judgment for that of individual school administrators throughout the nation, preventing some schools and libraries from using the services that they find to be the most efficient and effective means for providing the educational applications they seek to secure.[6]

This remains true today. For this reason, the Commission should follow through on calls by commenters to recommit the E-rate program to allowing "applicants to select the technology solutions that they believe are in their best interest."[7] This is consistent with the Commission's finding in the *First USF Report & Order*, which adopted the Joint Board's recommendation "to provide schools and libraries with the maximum flexibility to purchase from telecommunications carriers whatever package of commercially available telecommunications services they believe will meet their telecommunications service needs most effectively and efficiently."[8]

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[4]   Cisco Comments at 6.

[5]   Ohio E-rate Consortium Comments at 15.

[6]   *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report & Order, 12 FCC Rcd. 8776, ¶ 432 (1997) ("*First USF Report & Order*").

[7]   *See, e.g.,* Comments of Phillip B. Gieseler at 10 (citing *First USF Report & Order* ¶¶ 425, 431, and 432.)

[8]   *First USF Report & Order* ¶ 431.

The ultimate goal of the E-rate program should be to harness telecommunications, information, and advanced services to improve the educational opportunities available to students. As Cisco Systems noted in its comments, "Broadband-based applications improve learning and help schools to face today's challenges better. Virtual classrooms expand learning opportunities by bringing teaching resources to students who otherwise would lack them."[9] Thus, the goal of the E-rate program should be to facilitate students' access to online educational experiences so as to better prepare them for college and the job market. As the E-rate Consortium points out, "employers and colleges increasingly seek candidates who can exploit the Internet's resources – from the job or college application through work or study assignments."[10] The E-rate program should support efforts to prepare students for that reality.

Although schools will require high-speed access to the Internet, faster network connections alone will not achieve these purposes. Rather, the network connections must lead to valuable resources for administrators, teachers, and students to use, and it ultimately falls on schools to provide the online applications that fill this need. Although many commenters in this proceeding urge the Commission to commit more funding to the construction of new broadband infrastructure, such infrastructure is already largely in existence.[11] As both the Commission and commenters noted, nearly 100% of schools have Internet access, and 97% of these schools have broadband connections.[12] Although the Commission can and should work to ensure that schools

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[9]   *Id.*

[10]   Ohio E-rate Consortium Comments at 15-16.

[11]   *See, e.g.*, PBS Comments at 5; Verizon Comments at 3; Qualcomm Comments at 15.

[12]   R&E Network Community at 1-2 (citing Internet Access in U.S. Public Schools and Classrooms: 1994-2005, U.S. Dept. of Education, Institute of Education Sciences, NCES 2007-020, at 4-5 (NCES Study), available at http://nces.ed.gov/Pubsearch/pubsinfo.asp?pubid=2007020.

with substandard networks are able to upgrade their facilities, spending $2.25 billion annually to gold-plate a network is unnecessary and unproductive.

Rather, the Commission should support projects that are "integral, immediate, and proximate" to the education of students, regardless of the technology or platform used.[13] For instance, the SHLB Coalition points out that has been a "dramatic increase in the use of 'cloud computing' at K-12 schools."[14] Such services offer significant cost savings in terms of IT support, software, and hardware expenses at schools. Similarly, Verizon points out that "even though VoIP, text messaging, and potentially other services are being used by schools and libraries," these services "do not fit neatly within the current structure of the ESL" and the program should be modified in a manner consistent with improving the functionality required by schools.[15] The Commission should examine what steps it can take to improve student use of the network, including providing support for educational applications that run over the broadband network and encouraging the use of new means of communications, whether in the form of hosted content, mobile platforms, or mass messaging services.

III. THE E-RATE PROGRAM SHOULD CONTINUE TO SUPPORT WEB HOSTING

A. The Commission must justify its tentative conclusion to remove web hosting from the Eligible Service List.

Blackboard joins with other commenters in calling upon the FCC to more clearly explain its tentative decision to remove web hosting from the Eligible Service List ("ESL").[16] In 2004, the FCC added web hosting to the ESL because then, as now, many school districts found web

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[13] *Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 9202, ¶ 17 (2003) ("*Schools and Libraries Second Report and Order*"); 47 C.F.R. § 54.500(b).

[14] SHLB Coalition Comments at 3.

[15] Verizon Comments at 13-14.

[16] *See*, *e.g.*, EdLine & ePals Comments at 9.

hosting to be a useful and efficient way to post information for students, parents, and the community.[17] This has remained the case, and many schools currently take advantage of E-rate funds to develop Internet presences that provide numerous educational benefits. This is demonstrated most clearly by the more than 400 comments filed opposing the Commission's proposal to remove funding.

The Commission's sudden determination that it "do[es] not believe [web hosting] is essential is essential to the education purpose of schools and libraries" is also inconsistent with current broadband policy and requires further justification before adoption.[18] As Edline and ePals note, "the conclusion to eliminate web hosting eligibility … is seemingly at odds with the technology priorities of the Obama Administration and the Commission as found in the National Broadband Plan."[19] Before adopting any proposed change, the Commission must ensure that its decision-making process is well founded and not arbitrary – *i.e.*, that it is consistent with other Commission policies.[20] To the extent the Commission wishes to change its policies, it must first articulate a valid reason for the change.[21]

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[17]   *See ESL Order and FNPRM* ¶ 37.

[18]   *Id.*

[19]   EdLine & ePals Comments at 9.

[20]   See *Massachusetts v. E.P.A.*, 549 U.S. 497, 534–35 (2007) ("EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its action was therefore arbitrary, capricious, ... or otherwise not in accordance with law.") (ellipses in original; internal quotation marks omitted); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 34,43 (1983) (The agency's decision was arbitrary and capricious because it did not provide a reasoned explanation justifying its actions and there must be a "rational connection between the facts found and the choice made.").

[21]   *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position … And of course the agency must show that there are good reasons for the new policy.") (emphasis in original).

B. **The record overwhelmingly supports maintaining support for web hosting services.**

There is widespread support in the record for maintaining the E-rate program's current support of web hosting services. Numerous parties, including school administrators, service providers, and private citizens have written to explain the importance of these services to their school districts. For instance, the Superintendent of Golden Feather Union Elementary School District, which is located in a remote area of California (approximately 23 miles from Oroville, CA), explained that the school district relies upon the E-rate subsidies of its web hosting service "to reach many students, parents, and community members with valuable information" whom the rural nature of the school district makes it otherwise difficult to contact.[22] Similarly, the Rock Hills Unified School District stated that "parents, students, teachers, and district staff rely on having access to school information around the clock to keep informed about important issues, weather-related cancellations, and emergency notifications."[23] Private schools also expressed concern that loss of E-rate funding for their website would harm their ability to keep parents and students informed, as well as reach out to potential students and donors.[24]

Removing web hosting from the ESL would also require many current E-rate recipients to bear significant additional costs at a time when school budgets already are strained because of the weak economy. For instance, Worcester Public Schools of Massachusetts explained that the school "went through considerable expense and man-hours to convert [its] website to a hosted website service" when web hosting services became eligible for E-rate support. If the Commission were to remove web hosting from the ESL now, Worcester Public Schools "would

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[22] Golden Feather Union Elem. School District Comments at 1.

[23] Rock Hills USD 107 Comments at 1.

[24] *See, e.g.,* Alliance College Ready Public Schools Comments at 1.

have to consider moving to lower cost hosting service with fewer features or consider hosting the website internally." This process, however, "would require considerable time and cost, including employee man-hours, service costs, domain registration, etc." The same is true for numerous schools and libraries across the country. Indeed, NTCA contends that "removing web hosting from the ESL will have a disproportional adverse affect on poorer schools that may not have the resources to absorb the additional costs of web hosting."[25] This disruption would be both significant and costly, and should be considered by the Commission in any decision.

Other school districts have indicated that the loss of funding for web hosting might seriously interrupt their educational mission. For instance, San Lorenzo Unified School District explained that it uses its current web hosting facilities daily:

> We have over 4,000 laptop computers and thousands more desktop computers in the hands of students and teachers every day. These students and teachers are accessing instructional content daily via our web hosting capability. In addition, students and parents access daily homework assignments, grades, attendance, teacher comments and other critical instructional and educational information on a daily basis via our web hosting capability. web hosting has become more critical than any other vehicle for communication. Some say it is even more critical than traditional libraries and they may be correct, if not today then certainly tomorrow.[26]

Loss of support for such services will impact the quality of education throughout the school system.

Blackboard joins with Schoolwires Inc. in encouraging the Commission to look at the real-world impact of any decision to remove support from web hosting services. As Schoolwires explains, "the ability of teachers and school district administrators . . . to post material (from announcements to homework assignments) [online] dramatically cuts down on the paper, ink,

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25   NTCA Comments at 6-7.

26   Comments of Lowell Shira, San Lorenzo Unified School District at 1.

postage, and electricity necessary to produce hard copy mailing and handouts."[27] This saves

money for schools and reduces waste. Although these ancillary effects of the decision to cease

funding for web hosting may not be a primary concern of the Commission in this proceeding, the

Commission still should factor in these ancillary benefits of its policies.

IV.   NO RATIONALE EXISTS FOR THE COMMISSION'S EXCLUSION OF BROADCAST TEXT MESSAGING FROM THE ESL

Blackboard joins the call for the Commission to consistently apply the principles found in

the *First USF Report & Order* to its development of the ESL. As Edline and ePals noted, "E-

rate eligibility has been a very confusing program for participants … because USAC and the

FCC have not consistently applied their own eligibility principles" to the ESL list.[28] This is

certainly true with respect to broadcast text messaging services. There is no rational basis for

excluding broadcast text messaging from the ESL while at the same time covering e-mail and

basic text messaging.

The Commission's recent decisions to add interconnected VoIP and text messaging to the

ESL illustrate the appropriate way to determine whether support should be available. The

Commission added interconnected VoIP to the ESL because the addition will "enhance access to

advanced telecommunications and information service for schools and libraries … [and]

encourage meaningful communications among parents, teachers and school and library

administrators."[29] The Commission applied similar logic when it decided to support text

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[27]   Schoolwires Inc. Comments at 13.

[28]   Edline & ePals Comments at 15.

[29]   FY 2010 ESL Report & Order & FNPRM ¶ 13 (citing *First USF Report & Order* ¶ 47)

messaging because "text messaging is similar to other E-rate eligible services used by applicants to communicate, such as e-mail and paging services."[30]

These decisions were based on two premises. First, in order for a school or library to use E-rate funding to purchase telecommunications or information services, the use of these services must be for "educational purposes."[31] In the *Schools and Libraries Second Report and Order*, the Commission determined that "educational purposes" are those activities that are "integral, immediate, and proximate" to the education of students.[32] Second, the E-rate program is supposed to be "competitively neutral," which means that the E-rate program should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[33]

Blackboard joins with Edline and ePals in believing that "[t]here is no public policy objective that supports making arbitrary distinctions among communications tools that render some [tools] eligible for E-rate funding while other are not."[34] The decision to exclude broadcast text messaging when e-mail and plain text messaging services currently receive support is exactly the type of arbitrary distinction the Commission should avoid.

Like e-mail, broadcast text messaging allows for administrators and teachers to reach large numbers of individuals with important information. Furthermore, like e-mail, broadcast

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[30] FY 2010 ESL Report & Order & FNPRM ¶ 17.

[31] 47 U.S.C. § 254(h)(1)(B).

[32] *Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 9202, ¶ 17 (2003) ("*Schools and Libraries Second Report and Order*"); 47 C.F.R. § 54.500(b).

[33] *First USF Report & Order*, 12 FCC Rcd. at 8801-20, ¶¶ 47-49 (adopting the principle of "competitive neutrality" to mean that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

[34] Edline and ePals Comments at 17.

text messaging provides a "from-one-to-many" format that is particularly useful in emergency situations. Indeed, many of the same devices and services that allow recipients of school e-mails to retrieve and read those messages are also capable of receiving text messages. The Commission's decision to include standard text messaging on the ESL makes the decision to exclude broadcast text messaging even more puzzling. Essentially, the Commission's decision will allow schools to receive E-rate support if they choose to send text messages to groups using normal cellular phones through a slow, cumbersome, and more expensive process, but denies funding for any service that makes it more useful and efficient. For these reasons, the Commission should modify the ESL to allow for broadcast text messaging.

V. THERE IS WIDESPREAD SUPPORT FOR INDEXING THE E-RATE PROGRAM TO INFLATION

The Commission's proposal to index the E-rate funding cap to the rate of inflation was widely lauded by all commenters. As Dell explained in its comments, "since [the Schools and Library Program] was enacted into law in 1996, the E-rate program has succeeded in ensuring that our nation's schools have the financial resources to connect to the Internet" and such a change will continue this success.[35] Furthermore, as Motorola (among many others) noted, "this proposed change will benefit E-rate program participants by increasing the funds available to services and equipment and increasing the predictability of funding."[36] By definition, indexing the E-rate program to inflation will maintain (and not increase) the size of the Universal Service Fund, and will ensure the programs continued effectiveness. As such, the proposed change is long overdue and should be adopted immediately.

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[35] Dell Comments at 4.

[36] Motorola Comments at 8; *see also, e.g.* N.Y. State Dept. of Educ. Comments at 8; PBS Comments at 6.

VI. CONCLUSION

Consistent with the above recommendations and those found in its initial comments, Blackboard Inc. urges the Commission to adopt proposals that ensure that the E-rate Program funds telecommunications, information, and advanced services in a meaningful and competitively neutral way. The Commission should avoid the temptation to focus solely on supporting conduit-centric services, and instead embrace an approach designed to improve the educational experience for all students, regardless of where and how they access supported services.

Respectfully submitted,

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